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CASE:

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STATUTES:

Section 302(a) and (c)(4) of the Labor-Management Relations Act (61 Stat. 167, 29 U.S.C. 186(a) and (c) 1, 2, 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 203

LITTON BUSINESS SYSTEMS, INC.,
Petitioner,

v.

MONROE LODGE NO. 770, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether Article I of the collective bargaining agreement and dues deduction authorizations were valid under Section 302(c)(4) of the Labor-Management Relations Act, 61 Stat. 167, 29 U.S.C. 186(c)(4).

STATUTE INVOLVED

Section 302(a) and (c) of the Labor-Management Relations Act, 61 Stat. 167, 29 U.S.C. 186(a) and (c)(4) provides that:

> "(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value— * * *
>
> "(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce— * * *
>
> "(c) The provisions of this section shall not be applicable* * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; * * * "

STATEMENT

Litton Business Systems, Inc. entered into a collective bargaining agreement on April 27, 1967. This agreement provided in Article I that:

> "Upon receipt, by the company, of a signed authorization, the company will deduct the union initia-

tion or reinstatement fees and monthly dues from the pay of each of its employees who have or who may hereafter authorize such deductions. The sum so deducted shall be paid monthly to the appropriate financial officer of the union, together with an itemized statement showing the source of each deduction.

"All authorized deductions shall be effective and irrevocable for a period of one year or the termination date of this agreement, whichever occurs sooner.

"This authorization shall continue in full force and effect for yearly periods beyond the irrevocable period set forth above, and each subsequent yearly period shall be similarly irrevocable unless revoked within fifteen (15) days after an irrevocable period hereof. Such revocation shall be effective by Registered written notice to both the company, and the union, within fifteen (15) days period."

Following the execution of the union-company collective bargaining agreement, the union sought and received from a substantial number of the employees a new dues deduction authorization and assignment, due to the fact that the previous authorization and assignment had the amount of union dues stated therein which had been increased. The authorization and assignment stated:

"VOLUNTARY CHECKOFF AUTHORIZATION AND ASSIGNMENT

"Name ..... Clock No.....Dept....

"I hereby authorize..... to deduct each month from my wages on account of membership dues in Lodge No..... of the International Association of Machinists. I further authorize the Company to deduct from my wages to the amount of union initi-

ation fee, reinstatement fee and/or assessments when notified in writing to do so by the Financial Secretary of the Union.

"The sums thus to be deducted are hereby assigned by me to Lodge No..... of the International Association of Machinists and are to be remitted by the Company to the Financial Secretary of the Union.

"From time to time the Financial Secretary of the Union will notify the employer as to the amount of the Local Lodge's initiation and reinstatement fees and the amount of the Local Lodge's monthly dues.

"I submit this authorization and assignment with the understanding that it will be effective irrevocable for a period of one year from this date, or up to the termination date of the current collective bargaining agreement (if any) between the ..... and lodge No..... of the International Association of Machinists, whichever occurs sooner.

"This authorization and assignment shall continue in full force and effect for yearly periods beyond the irrevocable period set for the above and each subsequent yearly period shall be similarly irrevocable period hereof. Such revocation shall be effected by written notice to the employer and the union within such fifteen (15) day period.

"Signature .....Date....."

During the second year of the collective bargaining agreement between the parties, in the fall of 1968, a number of employees delivered to the company written revocations of these authorizations. Some of these notices stated that the employees wanted the company to discontinue deduction of their union dues from their wages. Other employees merely indicated their desire to resign from the union.

Although there were a few revocations received by the employer prior to one year after the date they were signed, most of the notices of revocation were sent after one year from the date the employees had originally authorized the deduction and after 15 day escape period provided in the dues deduction authorization had elapsed.

The employer ceased deducting the union dues of the employees who had sent notices of revocation after the one year and 15 day period had elapsed. Although the collective bargaining agreement between the union and the company and the employee authorization cards provided automatic renewal for yearly periods if the cards were not revoked within 15 day period, the employer honored these revocations and discontinued the dues deductions from the employees who had submitted such revocations.

On September 30, 1968, the union wrote the Director of Industrial Relations of the Company advising that the union felt that the company was violating the terms of the collective bargaining agreement by failing to comply with Article I thereof, which the union asserted required the company to continue making the deductions.

On October 3, 1968, the company replied that it would refuse to abide by the collective bargaining agreement in regard to Article I. On October 14, 1968, the union submitted a grievance to the company concerning the aforementioned alleged violation of the collective bargaining agreement. The company refused to answer the grievance on the grounds that the matter was not of a grievable nature. Thereafter, the union wrote the company requesting the grievance be submitted to arbitration pursuant to the terms and conditions of the

collective bargaining agreement. The company declined to comply with this request. Following this denial, the union instituted this suit on December 4, 1968, to compel arbitration; or in the alternative, that the company be required to pay the amounts which should have been deducted plus interest from the date such deductions should have been made. The District Court found that the collective bargaining agreement and the dues deduction authorizations were valid and not in violation of Section 302(c)(4) of the Labor-Management Relations Act, 61 Stat. 167, 29 U.S.C. 186(c)(4). Thereafter, cross appeals were filed by both the union and the company from the decision of the District Court.

ARGUMENT

The decision below concluded that the language of the collective bargaining agreement and the language of the dues deduction authorization were not restrictive and were in conformity with the statute, Section 302(c)(4), 29 U.S.C. 186(c)(4).

1. The decision below, contrary to the contention of the Petitioner, is not in conflict with *Felter* v. *Southern Pacific Co.*, 359 U.S. 326 (1959), for as the Court of Appeals for the 4th Circuit stated:

> "We need only add that the principles stated in Felter v. Southern Pacific Co., 359 U.S. 326 (1959), on which the company primarily relies, pertained to a factual situation so different that they do not dictate reversal." (A. 10)[1]

In the *Felter* case, this court had before it the question of the reasonableness of a requirement that an

[1] The symbol "A" followed by the number refers to the page of the decisions of the Court of Appeals and the District Court as reproduced in the petition.

employee revoking his checkoff must use the form provided by his union. This Court held that this was an unreasonable invasion of the employee's rights provided by the statute. However, in the present case, the employee has the right to revoke his dues deduction (checkoff) at the end of yearly periods although, admittedly, the employee signing the checkoff agrees that if the checkoff is not revoked at the end of the first year period, it automatically becomes irrevocable for another yearly period. Contrary to the *Felter* case, this provision was provided for in the checkoff authorization as well as in the collective bargaining agreement. Thus, as the Court of Appeals held, the facts were so completely different that the *Felter* case had no application to the case at bar.

2. The Petitioner contends that Congress enacted Section 302(c)(4) of the Labor-Management Relations Act to protect an employee in his freedom of choice and to prevent the employee from becoming a captive of a labor organization. It should be pointed out that the employee is not under any compulsion whatsoever to sign the dues authorization (checkoff) and does so only if he so chooses. Furthermore, if the employee does execute the form, he can revoke it at the termination of the collective bargaining agreement or one year from the date of his signing the authorization by notice to the union and the company.

The Petitioner contends that it would have been a simple task for the union to notify the employee when his 15 day escape period occurred. This is certainly not involved in this case for there is no provision in the collective bargaining agreement or dues authorization which requires such a notice although the employer could have, when bargaining on this subject,

included such provision in both the collective bargaining agreement and dues deduction authorization but chose not to do so in this case.

3. The automatic renewal clause of the dues authorization and collective bargaining agreement provides that the authorization can be revoked at the end of one year from the date of signing or the termination of the collective bargaining agreement, whichever occurs sooner. The collective bargaining agreement and dues deduction authorization continues the authorization in full force and effect for yearly periods beyond the irrevocable period set forth. Thus, the clear language makes the authorization revocable at the end of the second year from the date of signing or the termination of the collective bargaining agreement. Furthermore, none of the revocations involved in this case involved termination of the collective bargaining agreement since the agreement did not terminate until March 16, 1970, way beyond the period that the revocations were received.

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be denied.

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